

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AG33

Federal Employees Health Benefits Program: Procedures for Direct Payment of Premiums

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to eliminate the requirement for the use of certified mail, return receipt requested, when notifying certain enrollees that their enrollment in the Federal Employees Health Benefits (FEHB) Program will be terminated due to nonpayment of premiums unless the payment is received within 15 calendar days. The purpose of these regulations is to reduce the cost of administering the FEHB enrollments of enrollees who make payments directly rather than through payroll or annuity deductions.

EFFECTIVE DATE: July 3, 1995.

FOR FURTHER INFORMATION CONTACT: Margaret Sears (202) 606-0004.

SUPPLEMENTARY INFORMATION: On December 30, 1994, OPM published interim regulations in the **Federal Register** (59 FR 67605) eliminating the requirement for using certified mail, return receipt requested, when notifying FEHB enrollees that their coverage is about to be terminated due to nonpayment of premiums. Most individuals enrolled under the FEHB Program pay their share of the premiums through withholding from pay or annuity. However, in some cases enrollees may make direct payments. These include: (1) Certain annuitants and compensationers (individuals who are entitled to compensation from the Office of Workers' Compensation

Programs based on a job-related injury or disease) whose annuity or compensation has been waived or suspended; (2) former spouses whose enrollment is based on a qualifying court order under subpart H of 5 CFR part 890 governing FEHB; and (3) former employees, former spouses, and children enrolled under the Temporary Continuation of Coverage (TCC) provisions.

Under regulations in effect before we issued the interim regulations, if an employing office did not receive the payment by the due date, it was required to notify the enrollee by certified mail, return receipt requested, that continuation of coverage rests upon payment being made within 15 days (or 45 days for some enrollees living overseas) after receipt of the notice.

The interim regulations eliminated the requirement for sending the nonpayment notice by certified mail, return receipt requested. Further, they clarified that there must be a delay of 60 days (90 days for overseas enrollees) before employing offices take action to terminate enrollments for nonpayment of premiums. We believe that the interim regulations are much more convenient for the enrollee because the enrollees no longer need to sign for the notice. If no one is at home when a letter carrier delivers a return-receipt-requested letter, the addressee must go to the post office to sign for it. Under the interim regulations, the letter is left in the enrollee's mailbox and the enrollee has the information without making an unnecessary trip to the post office.

OPM received no comments on the interim regulations.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect individuals enrolled under the Federal Employees Health Benefits Program.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Federal Register

Vol. 60, No. 105

Thursday, June 1, 1995

Office of Personnel Management.

James B. King,
Director.

Accordingly, under authority of 5 U.S.C. 8913, the interim rule amending 5 CFR Part 890 published on December 30, 1994, (59 FR 67605) is adopted as final without any change.

[FR Doc. 95-13316 Filed 5-31-95; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Chapter VI and Part 620

RIN 0578-AA15

Wetlands Reserve Program

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: Title XIV of the Food Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), enacted on November 28, 1990, amended the Food Security Act of 1985 to provide for the establishment of the Wetlands Reserve Program (WRP). Under the WRP, the secretary of Agriculture is authorized to purchase easements from owners of eligible land who voluntarily agree to restore and protect farmed wetlands or converted wetlands and eligible adjacent acres. The Department of Agriculture Reorganization Act of 1994, authorized the establishment of the Natural Resources Conservation Service (NRCS) and transferred responsibility for the WRP from the Consolidated Farm Service Agency to the NRCS, formerly the Soil Conservation Service (SCS). This interim rule provides the process by which the WRP will be administered within the NRCS. This rule also amends 7 CFR Chapter VI to reflect the establishment of the NRCS and the abolishment of the SCS.

DATES: Effective date: June 1, 1995.

Comments should be received on or before July 31, 1995.

ADDRESSES: Comments should be sent to National Wetlands Team, Natural Resources Conservation Service, Cotton Annex, Mezzanine One, Post Office Box 2890, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT:
Bob Misso (202) 720-3534.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this interim rule is significant.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the NRCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined through an environmental review that this action is a modification of the existing WRP and is covered under the NRCS 1990 Environmental Assessment entitled, "Wetlands Reserve Program-Environmental Assessment: Wetlands Reserve Provision of the Conservation Program Improvements Act of 1990." Copies of the environmental assessment are available upon request from: Bob Misso, Program Manager, National Wetlands Team, Natural Resources Conservation Service, Mezzanine One, Cotton Annex, Post Office Box 2890, Washington, DC 20250.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 because it involves direct payments to individuals and not to State and local officials. See notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Wetlands Reserve Program—10.072.

Paperwork Reduction Act

The information collection requirements contained in this interim rule will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980.

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule are not retroactive. Furthermore, except as provided at 16 U.S.C. 3837a(e)(2), the provisions of this interim rule preempt State and local laws to the extent such laws are

inconsistent with this interim rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR Part 614 must be exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the affects of this rulemaking action on State, local, and tribal governments, and the public have been assessed. This action does not compel the expenditure of \$100 million or more by any State, local or tribal governments, or anyone in the private sector, and therefore a statement under section 202 of the Unfunded Mandates Reform act of 1995 is not required.

Discussion of Program

Under the WRP, the Natural Resources Conservation Service (NRCS) will purchase easements from persons voluntarily agreeing to allow for the restoration of farmed or converted wetlands. The 1990 Act (16 U.S.C. 3837 et seq.) created an umbrella program called the Agricultural Resource Conservation Program which includes the Environmental Conservation Acreage Reserve Program. The Environmental Conservation Acreage Reserve Program includes the Conservation Reserve Program (CRP) and the WRP.

The current regulations implementing the WRP were published by the Consolidated Farm Service Agency as a final rule on November 23, 1994 (59 FR 60297) and are codified at 7 CFR Part 703. This rule establishes a new part (7 CFR part 620) for WRP, and pursuant to the Department of Agriculture Reorganization Act of 1994, Public Law 103-354, the NRCS assumes responsibility for administrating the WRP. Funds will be allocated based on landowner interest, amount of restorable wetland acres, environmental benefits, cost of acquisition and restoration, and other factors as determined by the Chief, NRCS, in consultation with the U.S. Fish and Wildlife Service.

Section 3837 of Title 16, United States Code, specifies that eligible land will include farmed or converted wetlands, but not wetlands converted after December 23, 1985, together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the wetland values merit inclusion in the program taking into account the cost of restoring the wetlands. NRCS is also permitted to

include in the program: (1) farmed or converted wetlands and adjoining lands that are enrolled in the CRP with the highest wetland functions and values and that are likely to return to production at the end of the CRP contract; (2) other wetlands that would not otherwise be eligible if it is determined that inclusion in the program would significantly add to the value of the easement; and (3) riparian areas that link wetlands that are protected by easements or by some other device or circumstance that achieves the same purpose as an easement.

The NRCS shall not enroll lands that: (1) are converted wetlands if the conversion was commenced after December 23, 1985, (2) contain timber stands established under a CRP contract, (3) are owned by an agency of the United States, (4) are subject to a deed restriction of 30 years or more prohibiting the production of agricultural commodities, or (5) are subject to on-site or off-site conditions that preclude successful long term restoration.

With respect to owner eligibility, 16 U.S.C. 3837e provides that no WRP easement shall be created on land that has changed ownership in the preceding 12 months unless: (1) the new ownership was acquired by will or succession as a result of the death of the previous owner; or, (2) the Secretary determines that the land was acquired under circumstances that give adequate assurances that such land was not acquired for the purpose of placing it in the WRP.

In return for participation in the program, a landowner will receive financial compensation from the NRCS for the easement itself, and the NRCS will bear all or a portion of the cost of restoring the functions and values of the enrolled land. In each State, the State Conservationist, with the assistance of the State Technical Committee, shall determine easement payment rates to be applied to specific geographic areas within the State or to individual easement areas. In order to provide for better uniformity among States, the Regional Conservationist may review and adjust, as appropriate, any easement payment rates established within a region.

Compensation for easements acquired by the Secretary under the WRP must be an agreed upon amount, but not to exceed the fair market value of the land less the fair market value of such land encumbered by the easement, a method of valuation known as the before and after value of the land. In response to this requirement and the further desire to ensure that the program focus is

largely to maximize net environmental benefits per expenditure of federal funds, the compensation for the easements is limited to the agricultural value of the lands. Based upon acquisition experience, the effect of the WRP easement is largely to eliminate agricultural uses of the land. Therefore, to utilize the agricultural value of the land is equivalent to the value of the easement utilizing the traditional before and after method of valuation. Under this calculation of compensation, other speculative and higher uses are not considered in the determination of compensation rates. Furthermore, any compatible agricultural use of the easement area is limited to such level and timing of use as is integral to achieving and maintaining optimum wetland restoration benefits, and not for the purpose of achieving economic profit.

Therefore, the easement value rates will be determined using the best information which is readily available for assessing the values of land for agricultural purposes. Such information may include soil types, cropping histories, production histories, location, real estate market values, appraisals and market analyses, and tax rates and assessments.

To achieve program cost efficiency in relation to the ecological benefits to be achieved, the restoration of wetlands which maximize net environmental benefits per expenditure of federal funds will be emphasized. One source of accomplishing this cost-efficiency goal is to establish maximum easement payments for the State or geographic areas of the State. Maximum easement payment limitations may be available for public review prior to the sign-up period. No easement payment shall exceed the fair market value of the land rights being acquired.

Section 3837a of Title 16, United States Code, provides that the easements purchased under the WRP shall be in a recordable form and shall be for 30 years, permanent, or the maximum duration allowed under applicable State laws. Section 3837c(c) provides that in determining the acceptability of offers, consideration may be given to the extent to which the purposes of the program can be accomplished on the land, the productivity of the land, and the on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities. In addition, section 3837c(d) provides that to the extent practicable, taking into consideration costs and future agricultural and food needs, the Secretary shall give priority to obtaining permanent easements before shorter

term easements and, in consultation with the Secretary of the Interior, shall place priority on acquiring easements based on the value of the easement for restoring and protecting habitat for migratory birds and other wildlife. In order to accomplish this goal, § 620.6 and § 620.8(b)(5) of the interim rule provide that permanent easements will be preferred whenever possible.

Before proceeding to acquire a non-permanent easement, the State Conservationist will first seek to acquire any permanent easement offer that is determined to have the ecological and cost characteristics that warrant acquisition. After the effort to acquire permanent easements is completed, and provided that funding continues to be available, the State Conservationist, following review and approval of the request by the Regional Conservationist and the Chief, may pursue the acquisition of non-permanent easements.

The Regional Conservationist and the Chief, when considering the request of the State Conservationist, will simultaneously consider any backlog of unaccepted permanent easements offers that may exist in other areas of the region and Nation before approval of the acquisition of non-permanent easements is granted.

On land encumbered by permanent easements, the law establishing WRP allows for the Secretary to pay all the restoration costs or to cost-share with the landowner. The cost-share formula recognizes that the ecological benefits associated with a non-permanent easement is significantly less than that which would be associated with a permanent easement on the same land. Thus, 16 U.S.C. 3837c(b) provides for a smaller cost-share payment-rate on land encumbered with non-permanent easements than on land encumbered with permanent easements. In particular, section 3837c(b) provides for cost-share payments on non-permanent easements to range from 50 percent to 75 percent of restoration costs, whereas the cost-share payments on areas with permanent easements range from 75 percent to 100 percent of restoration costs (16 U.S.C. 3837c(b)). These restoration cost-share rates apply to NRCS expenditures and do not prohibit the landowner from obtaining cost-share assistance from other entities.

Under this rule, this statutory distinction between cost-share payments made for permanent versus non-permanent easements is replicated in the payment for the easements. For a given easement on a particular area of land, payments for non-permanent easements will be between 50 percent

and 75 percent of that which would be paid for a permanent easement. Easement payments for a short-term, 30-year easement will be 50 percent of that which would have been paid for a permanent easement. Such reduced easement payments are consistent with the significant reduction in ecological benefits and cost efficiency associated with non-permanent easements.

Landowners will be allowed to apply for transfer of eligible land from the CRP to WRP. Enrollment in WRP will not require the refund of past payments or require a reduced WRP easement payment. CRP contracts will be terminated at the time of enrollment in WRP.

This is a voluntary program designed to achieve cost-effective, long-lasting wetland restoration, and the NRCS shall not acquire easements by eminent domain or other non-voluntary acquisition procedures. As a means of improving selection competitiveness, landowners may accept cost-share or easement payments less than that which may be determined applicable for the particular easement.

During announced sign-up periods, interested landowners will be able to apply for enrollment by stating on an NRCS form their intention to participate. This Application for Participation must be submitted during an announced period for submissions. Sign-up periods may be announced periodically by the NRCS.

The State Conservationist, with the assistance of the State Technical Committee, will develop a ranking process. Each of the applications that are submitted by eligible landowners for eligible lands shall be evaluated according to the following factors: (1) Duration of the easement, (2) wetland functions and values, (3) habitat for migratory birds and other wildlife, particularly at risk species, (4) location significance, (5) wetland management requirements, (6) likelihood of success of restoration, (7) easement purchase and restoration costs borne by the NRCS, and (8) other environmental (e.g. water quality) or cost factors determined appropriate by the NRCS.

It is the intention of the NRCS in ranking the applications to enroll the wetlands that provide the greatest environmental benefits while taking into consideration the cost of restoration, easement purchase, and associated costs. The ranking process will emphasize factors that (1) Ensure the effectiveness of the restored wetland functions and values, and (2) incorporate regional and State ecological priorities. The Chief, NRCS, may identify and accept certain

easements that advance the national goals of the WRP, even if such lands would not otherwise receive priority under the regional or State ranking procedures. For example, the Chief may allocate funds for purposes related to special pilot programs for wetland management and monitoring, cooperative agreements with other Federal or State agencies for program implementation, or for coordination of easement enrollment across State boundaries.

All landowners who want to enroll land in the WRP shall: (1) Grant to the United States a reserved interest easement on the land; (2) agree to the implementation of a Wetlands Reserve Plan of Operation (WRPO); (3) provide for the creation and recordation of a deed restriction covering the easement area; and (4) ensure consent to the easement from persons holding a security interest in the property. The WRPO will be completed in consultation with the U.S. Fish and Wildlife Service and the Conservation District. The WRPO specifies the manner in which the enrolled land will be restored, operated, and maintained to accomplish the goals of the program.

Section 3837a(b) of Title 16, United States Code, requires, in addition, that the easement allow: (1) Repairs, improvements, and inspections on such lands that are necessary to maintain existing public drainage systems; and (2) landowners to control public access on the easement area while identifying access routes to be used for wetland restoration activities, management and monitoring. Section 3837a(b) also requires that the terms of the easement prohibit such activities as spraying with chemicals or mowing of the land except as allowed to comply with Federal or State noxious weed laws or Federal or State emergency pest treatment programs. These provisions have been incorporated into § 620.10 of this interim rule.

A major program participation requirement contained in § 620.10 is the inclusion in the easement of the right of the United States to determine if a specific use of the easement area may be permitted as compatible. For a use to be considered compatible, the Chief or designee must determine that the use is consistent with the long term protection and enhancement of the wetland resources for which the easement was established.

The uses commonly considered compatible include hunting and fishing, haying, grazing, and harvest of timber. Hunting and fishing are generally considered compatible where the activities are carried out under the

established State and Federal regulations that govern such uses. Haying, grazing, and timbering, because of the potential for substantial and adverse impacts upon the vegetative conditions of the easement area, may only be considered compatible under specifically prescribed circumstances that are directly associated with site-specific conditions as influenced by soil productivity, time of year, short and long term weather patterns, and other factors that may from time to time be pertinent. The type, method, timing, duration, and extent of a use, to be deemed compatible, must be an integral and positive part of the overall management plan for the easement area. For example, in a restored forested wetland easement area, a salvage cut to remove diseased or damaged trees may be appropriate. A selective harvest of overstory trees which opens up the canopy to provide for understory vegetative diversity may also be compatible in specific cases. A clear cutting approach to timber harvest, however, for the purpose of achieving economic gain at the expense of wetland functions and values would not be compatible with forested wetland functions and values.

Section 3837a(g) of Title 16, United States Code, provides that in the case of any violation of the terms and conditions of the easement or WRPO, the easement shall remain in force and the owner may be required to refund all or part of the payments made together with interest. Accordingly, this requirement has been incorporated into § 620.14 of this interim rule.

Once an easement has been recorded, a landowner can request modifications that do not adversely affect the functions and values for which the easement was established. Any modification, however, must result in equal or greater environmental and economic values to the United States, as determined by the NRCS in consultation with the U.S. Fish and Wildlife Service.

During the 1994 WRP sign-up, landowners in only 20 States could participate in the WRP. In fiscal year 1995 and subsequent years, no specific geographic limitation is required and eligible landowners in all 50 States and territories and possessions of the United States may, subject to a determination by the Chief, be given the opportunity to participate in the WRP.

This interim rule establishes a new part in chapter VI, title 7 of the Code of Federal Regulations, and makes the following changes to the administration of the program:

(1) Identifies possible enrollment availability in all 50 States, the District

of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(2) Expands land eligibility to certain agricultural lands that do not have a cropping history, such as former or degraded wetlands presently used for pasture and hayland;

(3) Provides a non-permanent easement option;

(4) Makes other changes to the administration of the program to become consistent with NRCS structure, policies, and procedures; and

(5) Delegates additional decision-making authority to the NRCS Regional Conservationists and State Conservationists with assistance provided by the State Technical Committees.

List of Subjects in 7 CFR Part 620

Administrative practices and procedures, Natural resources, Wetlands.

CHAPTER VI—NATURAL RESOURCES CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

Accordingly, 7 CFR chapter VI is amended as follows:

1. The heading of Chapter VI is revised to read as set forth above.

2. In 7 CFR Chapter VI (consisting of parts 600–663), all references to "Soil Conservation Service" are revised to read "Natural Resources Conservation Service," and all references to "SCS" are revised to read "NRCS."

3. A new part 620 is added to read as follows:

PART 620—WETLANDS RESERVE PROGRAM

Sec.

- 620.1 Purpose and scope.
- 620.2 Definitions.
- 620.3 Administration.
- 620.4 Program requirements.
- 620.5 Application procedures.
- 620.6 Establishing priority for enrollment of properties in WRP.
- 620.7 Enrollment.
- 620.8 Compensation for easements.
- 620.9 Cost-share payments.
- 620.10 Program participation requirements.
- 620.11 The WRPO development.
- 620.12 Modifications.
- 620.13 Transfer of land.
- 620.14 Violations and remedies.
- 620.15 Payments not subject to claims.
- 620.16 Assignments.
- 620.17 Appeals.
- 620.18 Scheme and device.

Authority: 16 U.S.C. 590a *et seq.*, 3837 *et seq.*

§ 620.1 Purpose and scope.

(a) The regulations in this part set forth the policies, procedures, and requirements for the Wetlands Reserve Program (WRP) as administered by the Natural Resources Conservation Service (NRCS) for program implementation and processing outstanding and new applications for enrollment during calendar year 1995 and thereafter.

(b) The Chief, NRCS, may implement WRP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

§ 620.2 Definitions.

The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one trip planters, or alfalfa and other multi-year grasses and legumes in rotation as approved by the Secretary. Land shall be considered planted to an agricultural commodity during a crop year if, as determined by the NRCS, an action of the Secretary prevented land from being planted to the commodity during the crop year.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

Commenced conversion wetland means a wetland or converted wetland for which the Consolidated Farm Service Agency has determined that the wetland manipulation was contracted for, started, or for which financial obligation was incurred before December 23, 1985.

Conservation District is a subdivision of a State or local government organized pursuant to applicable State law to promote soil and water conservation practices.

Conservation Reserve Program (CRP) means the program administered by the Secretary of Agriculture and referenced at 7 CFR Parts 704 and 1410.

Consolidated Farm Service Agency (CFS) is an agency of the United States Department of Agriculture.

Contract means the NRCS document that specifies the obligations and rights of any person who has been accepted for participation in the program.

Converted wetland means a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation, or any activity that results in impairing or reducing the flow, circulation, or reach of water) for the

purpose, or that has the effect, of making the production of an agricultural commodity possible if such production would not have been possible but for such action.

Cost-share payment means the payment made by the NRCS to achieve the restoration of the wetland functions and values of the easement area in accordance with the WRPO.

Easement means a reserved interest easement which is an interest in land defined and delineated in a deed whereby the landowner conveys all rights, title, and interests in a property to the grantee, but the landowner retains those rights, title, and interests in the property which are specifically reserved to the landowner in the easement deed.

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States under the WRP.

Farmed wetland means wetlands that were manipulated and used to produce an agricultural commodity prior to December 23, 1985, but had not been converted prior to that date and, therefore, are not prior converted croplands. These areas include potholes, playas, and pocosins that still meet the wetland criteria, and other wetlands that are seasonally ponded or flooded for an extended period of time during the growing season.

Farmed wetland pasture means wetlands that were manipulated and managed for pasture or hayland prior to December 23, 1985, but still meet wetland criteria and are not abandoned, or were prior converted croplands or farmed wetlands that were not cropped for 5 successive years, but were used for forage production during that time and have not been abandoned.

Forest Service is an agency of the United States Department of Agriculture.

Landowner means a person or persons having legal ownership of farmland, including those who may be buying farmland under a purchase agreement. Landowner may include all forms of collective ownership including joint tenants, tenants in common, and life tenants and remaindermen in a farm property.

Lands substantially altered by flooding means areas where flooding has created wetland hydrologic conditions which, with a high degree of certainty, will develop wetland soil and vegetation characteristics over time.

Natural Resources Conservation Service (NRCS) is an agency of the United States Department of

Agriculture, formerly called the Soil Conservation Service.

Permanent easement means an easement that lasts in perpetuity.

Person means one or more individuals, partnerships, associations, corporations, estates or trusts, or other business enterprises or other legal entities and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

Practice means a restoration measure necessary or desirable to accomplish the desired program objectives.

Prior converted cropland means wetlands that before December 23, 1985, were drained, dredged, filled, leveled, or otherwise manipulated including the removal of woody vegetation, for the purpose, or to have the effect, of making the production of an agricultural commodity possible and an agricultural commodity has been produced at least once before December 23, 1985.

Riparian areas means areas of land that occur along streams, channels, rivers, and other water bodies. These areas are normally distinctly different from the surrounding lands because of unique soil and vegetation characteristics, may be identified by distinctive vegetative communities which are reflective of soil conditions normally wetter than adjacent soils, and generally provide a corridor for the movement of wildlife.

State Technical Committee means a committee established by the Secretary of the U.S. Department of Agriculture in a State pursuant to 16 U.S.C. 3861. For the purposes of the WRP, the State Conservationist will be the chairperson of the State Technical Committee.

U.S. Fish and Wildlife Service is an agency of the United States Department of the Interior.

Wetland means land that:

(1) Has a predominance of hydric soils;

(2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) Does support a prevalence of such vegetation under normal circumstances. For purposes of WRP, wetland shall also refer to adjacent lands that contribute to wetland functions and values.

Wetland functions and values means the hydrological and biological characteristics of wetlands and the social worth placed upon these characteristics, including:

(1) Habit for migratory birds and other wildlife, in particular at risk species;

(2) Protection and improvement of water quality;

- (3) Attenuation of water flows due to flood;
- (4) The recharge of ground water;
- (5) Protection and enhancement of open space and aesthetic quality;
- (6) Protection of flora and fauna which contributes to the Nation's natural heritage; and
- (7) Contribution to educational and scientific scholarship.

Wetland restoration means the rehabilitation of degraded or lost habitat in a manner such that:

- (1) The original vegetation community and hydrology are, to the extent practical, re-established; or
- (2) A community different from what likely existed prior to degradation of the site is established. The hydrology and native self-sustaining vegetation being established will substantially replace original habitat functions and values but does not involve more than 30 percent of the wetland restoration area.

WRP means the Wetlands Reserve Program.

WRPO means the Wetlands Reserve Plan of Operations.

§ 620.3 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) The Chief is authorized to modify or waive a provision of this part if the Chief deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the environmental and cost-efficiency goals of the WRP. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part which is required by applicable law.

(c) As determined by the Chief and the Administrator of the Consolidated Farm Service Agency, the NRCS will seek the agreement of the Consolidated Farm Service Agency in establishing policies, priorities, and guidelines related to the implementation of this part.

(d) The State Conservationist will consult with the State Technical Committee on the development of the rates of compensation for an easement, a priority ranking process, and related policy matters.

(e) The NRCS may delegate at any time easement management, monitoring, and enforcement responsibilities to other Federal or State agencies.

(f) The NRCS may enter into cooperative agreements with Federal or State agencies and with private conservation organizations to assist the NRCS with educational efforts, easement management and monitoring, and program implementation assistance.

(g) The NRCS shall consult with the U.S. Fish and Wildlife Service in the implementation of the program and in establishing program policies. The NRCS may consult with other Federal and State agencies and other organizations in program administration. No determination by the U.S. Fish and Wildlife Service, Federal, or State agency shall compel the NRCS to take any action which the NRCS determines will not serve the purposes of the program established by this part.

(h) The Chief may allocate funds for such purposes related to special pilot programs for wetland management and monitoring, emergencies, cooperative agreements with other Federal or State agencies for program implementation, coordination of easement enrollment across State boundaries, or for other goals of the WRP found in this part.

§ 620.4 Program requirements.

(a) *General.* Under the WRP, the NRCS will purchase conservation easements from eligible landowners who voluntarily cooperate in the restoration and protection of wetlands and associated lands. To participate in WRP, a landowner will agree to the implementation of a Wetlands Reserve Plan of Operations (WRPO), the effect of which is to restore, protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands. The NRCS may provide cost-share assistance for the activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values. Specific restoration, protection, enhancement, maintenance, and management actions may be undertaken by the landowner or other NRCS designee.

(b) Acreage limitations.

(1) Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, no more than 25 percent of the total cropland in any county, as determined by the Consolidated Farm Service Agency, may be placed in the Environmental Conservation Acreage Reserve Program, 16 U.S.C. 3830, and no more than 10 percent of the total cropland in the county may be subject to an easement.

(2) The NRCS and the Consolidated Farm Service Agency shall concur before a waiver of either the 25 percent limit or the 10 percent limit of this subsection can be approved for an easement proposed for enrollment in the WRP. Such a waiver will only be approved if it will not adversely affect the local economy.

(c) *Landowner eligibility.* To be eligible to participate in the WRP, a person must:

- (1) Be the landowner of eligible land for which enrollment is sought;
- (2) Have been the landowner of such land for the 12 months prior to the time the intention to participate is declared unless it is determined by the State Conservationist that the land was acquired by will or succession as a result of the death of the previous landowner, or that adequate assurances have been presented to the State Conservationist that the new landowner of such land did not acquire such land for the purpose of placing it in the WRP; and

(3) Agree to provide such information to the NRCS as the agency deems necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(d) Eligible land.

(1) The NRCS shall determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration of wetland functions and values when considering the cost of acquiring the easement and restoration, protection, enhancement, maintenance, and management costs.

(2) Land which meets the eligibility requirements of this section shall only be considered for enrollment in WRP if the NRCS determines, in consultation with the U.S. Fish and Wildlife Service, that the wetland functions and values can and will be restored, protected, enhanced, maintained, and managed.

(3) The following land is eligible for enrollment in the WRP, which land may have been determined by the NRCS pursuant to regulations and implementing policies is pertaining to wetland conservation found at 7 CFR 12.30-12.33, as:

(i) Wetlands farmed under natural conditions, farmed wetlands, prior converted cropland, commenced conversion wetlands, farmed wetland pastures, and lands substantially altered by flooding so as to develop wetland functions and values;

(ii) Former or degraded wetlands that occur on lands that have been used or are currently being used for the production of food and fiber, including rangeland and forest production lands, where the hydrology has been significantly degraded or modified and will be substantially restored;

(iii) Riparian areas along streams or other waterways that link or, after restoring the riparian area, will link wetlands which are protected by an

easement or other device or circumstance that achieves the same objectives as an easement:

(iv) Land adjacent to the restored wetland which would contribute significantly to wetland functions and values including buffer areas, wetland creations, and non-cropped neutral wetlands, but not more than the State Conservationist, in consultation with the State Technical Committee, determines is necessary for such contribution;

(v) Other wetlands that would not otherwise be eligible but would significantly add to the wetland functions and values; and

(vi) Wetlands that have been restored under a private, State, or Federal restoration program with an easement or deed restriction with a duration of less than 30 years.

(4) To be enrolled in the program, eligible land must be configured in a size and with boundaries that allow for the efficient management of the area for easement purposes and otherwise promote and enhance program objectives.

(e) *Ineligible land.* The following land is not eligible for enrollment in the WRP:

(1) Converted wetlands if the conversion was commenced after December 23, 1985;

(2) Land that contains timber stands established under a CRP contract;

(3) Lands owned by an agency of the United States;

(4) Land subject to an easement or deed restriction with a duration of 30 years or more prohibiting the production of agricultural commodities; and,

(5) Lands where implementation of restoration practices would be futile due to on-site or off-site conditions.

(f) *Enrollment of CRP lands.* Land subject to an existing CRP contract may be enrolled into the WRP only if the land and landowner meet the requirements of this part, and the enrollment is requested by the landowner and agreed to by the NRCS. To enroll in WRP, the CRP contract for the property shall be terminated or otherwise modified subject to such terms and conditions as are mutually agreed upon by the Consolidated Farm Service Agency and the landowner.

§ 620.5 Application procedures.

(a) *Application for participation.* To apply for enrollment, a landowner must submit an Application for Participation in the WRP. The application must be submitted during an announced period for such submissions.

(b) *Preliminary agency actions.* By filing an Application for Participation,

the landowner consents to an NRCS representative entering upon the land for purposes of assessing the wetland functions and values, and for other activities such as the development of the preliminary WRPO that are necessary or desirable for the NRCS to make offers of enrollment. The landowner is entitled to accompany an NRCS representative on any site visits.

(c) *Voluntary reduction in compensation.* In order to enhance the probability of enrollment in WRP, a landowner may voluntarily offer to accept a lesser payment than is being offered by the NRCS.

§ 620.6 Establishing priority for enrollment of properties in WRP.

(a) *Ranking considerations.* Based on applications for participation, the State Conservationist, in consultation with the U.S. Fish and Wildlife Service and the State Technical Committee, will rank properties based on: estimated costs of restoration and easement acquisition, availability of matching funds, significance of wetland functions and values, estimated success of restoration measures, and the duration of a proposed easement with permanent easements being given priority over non-permanent easements.

(b) The NRCS may place higher priority on certain geographic regions of the State where restoration of wetlands may better achieve NRCS State and regional goals and objectives.

(c) Notwithstanding any limitation of this part, the State Conservationist may enroll eligible lands at any time in order to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. Similarly, the State Conservationist may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling to participate.

§ 620.7 Enrollment.

(a) *Offers of enrollment.* Based on the priority ranking, the NRCS will notify an affected landowner of tentative acceptance into the program for which the landowner has 15 calendar days to sign a letter of intent to continue. NRCS will select lands to maximize environmental benefits per expenditure of Federal funds.

(b) *Effect of letter of intent to continue (tentative acceptance).* An offer of tentative acceptance into the program does not bind the NRCS or the United States to acquire an easement, nor does it bind the landowner to convey an easement or agree to WRPO activities.

However, receipt of an executed letter of intent to continue will authorize the NRCS to proceed.

(c) *Acceptance of offer of enrollment.* A contract will be presented by the NRCS to the landowner, which will describe the easement area; the easement terms and conditions; and other terms and conditions for participation that may be required by the NRCS. A landowner accepts enrollment in the WRP by signing contract.

(d) *Effect of the acceptance of the offer.* After the contract is executed by NRCS and the landowner, the NRCS will proceed with various easement acquisition activities, which may include conducting a survey of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other activities necessary to record the easement or implement the WRPO.

(e) *Withdrawal of offers.* Prior to execution by the United States and the landowner of the contract, the NRCS may withdraw its offer anytime due to availability of funds, inability to clear title, or other reasons. The offer to the landowner shall be void if not executed by the landowner within the time specified. The date of the offer shall be the date of notification to the landowner of tentative acceptance.

§ 620.8 Compensation for easements.

(a) *Establishment of rates.*

(1) The State Conservationist, in consultation with the State Technical Committee, shall determine easement payment rates to be applied to specific geographic areas within the State or to individual easement areas.

(2) In order to provide for better uniformity among States, the Regional Conservationist and Chief may review and adjust, as appropriate, State or other geographically based easement payment rates.

(b) *Determination of easement payment rates.*

(1) Easement payment rates will be based upon analyses of the values of the lands when used for agricultural purposes. The landowner will receive the lesser of the following:

- (i) the geographic area rate;
- (ii) the value based on a market appraisal analysis/assessment; or
- (iii) the landowner offer.

(2) Each State Conservationist will determine the easement payment rates using the best information which is readily available in that State for assessing the values of land for agricultural purposes. Such information may include: soil types, type(s) of crops capable of being grown, production

history, location, real estate market values, appraisals and market analyses, and tax rates and assessments. The State Conservationist may consult with other Federal agencies, real estate market experts, appraisers, local tax authorities, and other entities or persons which may provide information on productivity and market conditions.

(3) Easement payments for non-permanent easements will be less than those for permanent easements because the quality and duration of the ecological benefits derived from a non-permanent easement are significantly less than those derived from a permanent easement on the same land. Easement payments for a non-permanent easement shall be determined by the Chief at between 50 percent and 75 percent of that which would have been paid for a permanent easement, with the actual percentage of compensation being determined by the Chief based upon the extent to which full restoration and ecological benefits can be achieved when compared to a permanent easement. Easement payments for the short-term 30-year easements shall be 50 percent of that which would have been paid for a permanent easement.

(4) Before proceeding to acquire a non-permanent easement, the State Conservationist shall first seek to acquire any permanent easement offer that is determined to have the ecological and cost characteristics that warrant acquisition. After the effort to acquire permanent easements is completed, and provided that funding continues to be available, the State Conservationist, in consultation with the State Technical Committee and following review and approval of the request by the Regional Conservationist and the Chief, may pursue the acquisition of non-permanent easements.

(5) The Regional Conservationist and the Chief, when considering the request of the State Conservationist for approval to acquire a non-permanent easement, will simultaneously consider any backlog of unaccepted permanent easement offers that may exist in other areas of the region and Nation before approval of the acquisition of non-permanent easements is granted.

(c) *Maximum payments.* In order to ensure that limited program funds are expended to maximize program benefits, the State Conservationist, in consultation with the State Technical Committee, may establish a maximum easement payment for any one easement within a State or for geographic areas within a State.

(d) *Preliminary estimates of easement payments.* Upon request of the

landowner prior to filing an application for enrollment, a landowner may be appraised of the maximum easement payment rates.

(e) *Acceptance of offered easement compensation.*

(1) The NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment which is offered by the NRCS. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participating in the program, a landowner waives any claim to additional compensation based on fair market value.

(2) For permanent easements, the NRCS may make one lump-sum cash easement payment after the easement is recorded.

(3) For non-permanent easements, the easement payment shall be made in no less than 5 annual payments or no more than 20 annual payments.

(f) *Reimbursement of a landowner's expenses.* For completed easement conveyances, the NRCS will reimburse landowners for their fair and reasonable expenses, if any, incurred for surveying and related costs, as determined by the NRCS. The State Conservationist, in consultation with the State Technical Committee, may establish maximum payments to reimburse landowners for reasonable expenses.

(g) *Tax implications of easement conveyances.* Subject to applicable regulations of the Internal Revenue Service, a landowner may be eligible for a bargain sale tax deduction which is the difference between the fair market value of the easement conveyed to the United States and the easement payment made to the landowner. The NRCS disclaims any representations concerning the tax implications of any easement or cost-share transaction.

(h) *Payment limitation on non-permanent easements.* With respect to non-permanent easements, the annual amount of easement payments to any person shall not exceed \$50,000.

(i) If easement payments are calculated on a per acre basis, adjustment to stated easement payment will be made based on final determination of acreage.

§ 620.9 Cost-share payments.

(a) In addition to easement payments, the NRCS may share the cost with landowners of restoring the enrolled land as provided in the WRPO after the easement is recorded. The amount and terms and conditions of the cost-share assistance shall be subject to the following restrictions on the costs of

establishing or installing practices specified in the WRPO:

(1) On enrolled land subject to a permanent easement, the NRCS shall offer to pay not less than 75 percent nor more than 100 percent of such costs; and

(2) On enrolled land subject to a non-permanent easement, the NRCS shall offer to pay not less than 50 percent nor more than 75 percent of such costs. Cost-share payments offered by NRCS for the short-term, 30-year easements shall be 50 percent.

(b) Cost-share payments may be made only upon a determination by the NRCS that an eligible practice or an identifiable unit of the practice has been established in compliance with appropriate standards and specifications. Identified practices may be implemented by the landowner or other designee.

(c) Cost-share payments may be made for the establishment and installation of additional eligible practices, or the maintenance or replacement of an eligible practice, but only if NRCS determines the practice is needed to meet the objectives of the easement, and the failure of the original practices was due to reasons beyond the control of the landowner.

(d) A landowner may seek additional cost-share assistance from other public or private organizations as long as the activities funded are in compliance with this part. In no event shall the landowner receive an amount which exceeds 100 percent of the total actual cost of the restoration.

§ 620.10 Program participation requirements.

(a) To enroll land in WRP, a landowner shall grant an easement to the United States. The easement shall require that the easement area be maintained in accordance with WRP goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, and management of wetland and other land functions and values.

(b) For the duration of its term, the easement shall require, at a minimum, that the landowner, and the landowner's heirs, successors and assigns, shall cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the easement and with the terms of the WRPO. In addition, the easement shall grant to the United States, through the NRCS:

(1) A right of access to the easement area;

(2) The right to permit compatible uses of the easement area, including such activities as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established;

(3) All rights, title and interest in the easement area subject to compatible uses reserved to the landowner; and,

(4) The right to perform restoration, protection, enhancement, maintenance, and management activities on the easement area.

(c) The landowner shall convey title to the easement which is acceptable to the NRCS. The landowner shall warrant that the easement granted to the United States is superior to the rights of all others, except for exceptions to the title which are deemed acceptable by the NRCS.

(d) The landowner shall:

(1) Comply with the terms of the easement;

(2) Comply with all terms and conditions of any associated contract;

(3) Agree to the permanent retirement of any existing cropland base and allotment history for the easement area under any program administered by the Secretary, as determined by the Consolidated Farm Service Agency;

(4) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the easement in accordance with the terms of the easement and related agreements;

(5) The landowner may have the option to enter into an agreement with governmental or private organizations to assist in carrying out any landowner responsibilities on the easement area; and,

(6) Agree that each person who is subject to the easement shall be jointly and severally responsible for compliance with the easement and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

§ 620.11 The WRPO development.

(a) The NRCS shall prepare the WRPO in consultation with the U.S. Fish and Wildlife Service and the Conservation District. At the local level, the NRCS must reach agreement with the U.S. Fish and Wildlife Service. If agreement cannot be reached, the WRPO will be forwarded to the State Conservationist, who, giving consideration to the information provided by the U.S. Fish and Wildlife Service, will develop the WRPO. In all cases of disagreement at

the local level, the NRCS and the U.S. Fish and Wildlife Service will file a report with their respective national offices.

(b) The WRPO shall specify the manner in which the enrolled land shall be restored, protected, enhanced, maintained, and managed to accomplish the goals of the program.

§ 620.12 Modifications.

(a) Easements.

(1) After an easement has been recorded, no modification will be made in the easement except by manual agreement with the Chief and the landowner. The Chief will consult with the U.S. Fish and Wildlife Service and the Conservation District prior to making any modifications to easements.

(2) Approved modifications will be made only in an amended easement which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(3) The Chief may approve modifications to facilitate the practical administration and management of the easement area or the program so long as the modification will not adversely affect the wetland functions and values for which the easement was acquired.

(4) Modifications must result in equal or greater environmental and economic values to the United States.

(b) *WRPO.* Insofar as is consistent with the easement and applicable law, the Chief may approve modifications to the WRPO after consultation with the U.S. Fish and Wildlife Service. Any WRPO modification must meet WRP program objectives, and must result in equal or greater environmental and economic values to the United States. Modifications to the WRPO which are substantial and affect provisions of the easement may require agreement from the landowner and require execution of an amended easement.

§ 620.13 Transfer of land.

(a) *Offers voided.* Any transfer of the property prior to the landowner acceptance into the program shall void the offer of enrollment. At the option of the State Conservationist, an offer can be extended to the new landowner if the new landowner agrees to the same or more restrictive easement and contract terms and conditions.

(b) Payments to landowners.

(1) For non-permanent easements with multiple annual payments, any remaining easement payments will be made to the original landowner unless the NRCS receives an assignment of

proceeds from the original landowner to a successor in title.

(2) The new landowner or purchaser shall be held responsible for assuring completion of all measures and practices required by the contract. Eligible cost-share payments shall be made to the new landowner upon presentation of an assignment of rights or other evidence that title had passed.

(c) *Claims to payments.* With respect to any and all payments owed to landowners, the United States shall bear no responsibility for any full payments or partial distributions of funds between the original landowner and the landowner's successor. In the event of a dispute or claim on the distribution of cost-share payments, the NRCS may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

§ 620.14 Violations and remedies.

(a) In the event of a violation of the easement or any associated contract directly involving the landowner, the landowner shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist may allow.

(b) Notwithstanding paragraph (a) of this section, the NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of the NRCS when such actions are deemed necessary to protect important wetland functions and values or others rights of the United States under the easement. The landowner shall be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or contractual obligations.

(c) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, the NRCS may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants or any associated contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(d) The United states shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

§ 620.15 Payments not subject to claims.

Any cost-share or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 620.16 Assignments.

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 620.17 Appeals.

(a) A person participating in the WRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal procedures pursuant to Title II, Subtitle B and Subtitle H of the Department of Agriculture Reorganization Act of 1994, Public Law 103-354.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final agency action except a decision of the Chief of NRCS under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by the NRCS in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of the NRCS in accordance with applicable law.

§ 620.18 Scheme and device.

(a) If it is determined by the NRCS that a landowner has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such landowner during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by the NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A landowner who succeeds to the responsibilities under this part shall report in writing to the NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

Signed at Washington, DC on May 19, 1995.

Gary A. Margheim,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. 95-13161 Filed 5-31-95; 8:45 am]

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Agricultural Marketing Service**7 CFR Part 981**

[FV94-981-3IFR]

Almonds Grown in California; Release of the Reserve Established for the 1994-95 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document relaxes volume regulations imposed on California almond handlers for the 1994-95 crop year by releasing reserve almonds into salable channels. Volume regulations were imposed under the authority of the Federal marketing order which regulates the handling of almonds grown in California and is locally administered by the Almond Board of California (Board). During the 1994-95 season, handlers were required to withhold as a reserve, from normal competitive markets, 10 percent of the almonds which they received from growers. The remaining 90 percent of the crop could be sold by handlers to any market at any time. This rule relaxes these regulations on handlers by releasing the reserve percentage to the salable category and is necessary to provide a sufficient quantity of almonds to meet anticipated trade demand and carryover needs.

DATES: Effective on May 25, 1995; comments received by July 3, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division,

AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1509, or fax (202) 720-5698; or Martin Engeler, Assistant Officer-in-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, or fax (209) 487-5906.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in accordance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable and reserve percentages may be established for almonds during any crop year. This rule revises the salable and reserve percentages for marketable California almonds during the 1994-95 crop year. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order